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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA – SANTA ROSA DIVISION
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11 In Re:

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13 DEAN GREGORY ASIMOS,

14 Debtor.
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Case No.: 11-13214-AJ

Chapter 13

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEBTOR'S MOTION TO VALUE
COLLATERAL AND AVOID JUNIOR
LIEN

NO HEARING REQUESTED

Judge: Hon. Judge Jaroslovsky

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20 In this matter, Dean Gregory Asimos (hereinafter "Debtor") filed for
21 bankruptcy protection under Chapter 13. The voluntary petition was filed on August
22 29, 2011.

23 11 U.S.C. §1322(b)(2) allows a debtor's plan to modify the rights of holders of
24 secured claims, other than a claim secured only by a security interest in real property
25 that is the debtor's principal residence. Case law has provided an exception to this
26 anti-modification clause for the status of junior liens. Section 1322 focuses on the
27 modification of the rights of lien holders, not the status of claims. In re Nobelman, the
28 Court found that it was proper to look to 11 U.S.C. §506 for a judicial valuation of the

1 collateral to determine the status of the creditors claim. Nobelman v. American Sav.
2 Bank, 508 U.S. 324 (U.S. 1993). In re Zimmer, the 9th Circuit Court of Appeals
3 reversed and remanded the case, finding that the Bankruptcy Code's anti-
4 modification protection of Section 1322, is only available to holders of secured claims.
5 Zimmer v. PSB Lending Corp., 313 F.3d 1220 (9th Cir. Cal. 2002). Therefore, a wholly
6 unsecured lien on real property may be avoided in a Chapter 13 proceeding.

7 Vincent P. O'Leary, an individual (hereinafter "Lender") holds a junior lien on
8 Debtor's residence. Lender's lien is a second mortgage with a present principal
9 balance of approximately \$125,000. Debtor's real property is located at 1040 East
10 MacArthur Street, Sonoma, California 95476 (hereinafter "the Property"). It is
11 encumbered with a first mortgage held by Ocwen Financial Corporation with an
12 approximate present principal balance of \$764,782.80. The present value of the
13 Property is approximately \$607,600. As such, Lender's lien is wholly unsecured. A
14 proffered estimate of the Property's value is attached to the Declaration of Dean
15 Gregory Asimos filed concurrently herewith.

16 For all of the reasons set forth above, Debtor respectfully requests that the
17 Court avoid the Lender's lien, remove the lien from the collateral, and determine that
18 the status of Lender's claim is unsecured.

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20 Respectfully submitted:
21 **SAGARIA LAW, P.C.**

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23 Dated: August 30, 2011

24 By: /s/ Elliot Gale, Esq.
25 Elliot Gale, Esq.
26 Attorney for Debtor
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